

SENATE BILL 2304

By Fowler

AN ACT to amend Tennessee Code Annotated, Section 5-7-101; Title 29, Chapter 17 and Title 29, Chapter 16, and other sections of Tennessee Code Annotated to make conforming changes relative to eminent domain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapters 16 and 17, are amended by deleting such chapters in their entirety and by substituting instead the language in Section 2 as a new chapter 16 with parts as designated therein.

SECTION 2.

PART 1.

29-16-101. (a)(1) The state and all local governments may exercise the power of eminent domain for public purposes in accordance with the provisions of this part.

(2) As used in this part, the term:

(A) "Local governments" means counties, municipalities, or metropolitan governments in this state.

(B) "Governmental entity" means the state, county, municipality or metropolitan government.

(b) Levee and drainage districts located in counties with a population of not less than thirty thousand (30,000) nor more than thirty-one thousand (31,000) persons according to the 1970 federal census or any subsequent federal census, created pursuant to title 69, chapter 6 are hereby authorized and empowered to acquire by the exercise of the power of eminent

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domain, in the manner hereinafter set out, such right-of-way, land, material, easements and rights as may be deemed necessary, suitable or desirable to construct levees, ditches, drains or watercourses, or to straighten, widen, deepen, or change natural watercourses in such districts.

(c) The provisions of this part shall also be deemed, unless expressly stated to the contrary, and without incorporation or reference, to be a part of every section, or legislative act, present or future, which grants the power of eminent domain to the state, counties or municipalities for state, county and municipal public purposes respectively, and the making of compensation in the manner therein set forth shall also be so implied.

29-16-102. When a governmental entity or a levee or drainage district authorized to condemn by § 29-16-101(b) deems it necessary or desirable to condemn any property or property rights, it shall proceed to determine what it deems to be the amount of damages to which the owner is entitled because of the taking of such property or property rights, and shall deposit such amount with the clerk of the circuit court having jurisdiction in the county in which the same or a portion of the same is located, and shall file a petition in such court asking that the same be condemned and decreed to the condemnor.

29-16-103. (a) Such petition shall:

- (1) Name as defendants all persons who have or may have an interest in or lien upon such property or property rights;
- (2) State the residence of each if known and if unknown that fact shall be stated;
- (3) Contain a description of the property or property rights sought to be condemned, and the civil district in which the same is located;
- (4) State the particular public purpose for which the land is to be used with such particularity that a jury could determine the quantity of land needed for such purpose in accordance with the provisions of §29-16-108; and
- (5) The amount of damages to which the condemnor has determined that the owner will be entitled, including those fees and costs set out in §29-16-110(a), which

amount shall be deposited with the clerk, and shall pray that the property be condemned and decreed to the condemnor.

It shall not be necessary to specify the interest or claim of the several defendants.

(b) Notice of the filing of such petition shall be given the owner of the property or property rights at least thirty (30) days prior to the taking of any additional steps in the case. If the owner is a nonresident of the state or unknown, notice shall be given by publication as provided by law in similar cases in circuit court.

(c) After the expiration of thirty (30) days from the date of the giving of such notice, if the right to take is not questioned, the condemnor shall have the right to take possession of the property or property rights sought to be condemned; and if necessary to place such condemnor in possession thereof, the court shall issue a writ of possession to the sheriff of the county to put the condemnor in possession.

29-16-104. If the owner is satisfied with the amount deposited by the condemnor with the clerk of the court, the owner may file with the clerk a statement, duly sworn to, stating that such person is the owner of the property or property rights described in the petition and that the owner accepts the amount deposited with the clerk as full settlement for the taking of such property or property rights and all damages occasioned to the residue of such person's property. The clerk shall pay to the owner the amount deposited with the clerk, and the court shall enter a decree divesting the title to the property or property rights out of the owner and vesting the same in the condemnor.

29-16-105. If the owner (or one owner if more than one person has an ownership interest in the property) is not satisfied with the amount assessed by the condemnor or otherwise objects to the taking, such owner shall, on or before thirty (30) days from the date of notice of the filing of the petition, file an answer to the petition and thereupon a trial may be had before a petit jury as other civil actions are tried.

29-16-106. If the owner asks for a trial as provided by § 29-16-105 the owner may, if the owner so desires, make written request to the clerk to pay to the owner, without prejudice to the rights of either party, the sum so deposited with the clerk, and the clerk shall pay to the owner the sum so deposited, provided the owner agrees to refund the difference between such sum and the final award, and in the case that the final award is less than the sum so paid to the owner, to allow a judgment to be entered against the owner for the difference.

29-16-107. If the owner does not answer, then the petition shall be taken as confessed and the case set for hearing upon the record and in the absence of the owner.

29-16-108. (a) The only issue or question to be tried is the amount of damages to be paid as just compensation for the property or property rights taken, including the sufficiency of the quantity of land taken or required for the proposed public purpose. The court shall not set aside the taking of the land for a public purpose unless the taking is arbitrary, capricious or fraudulent. In the case of adverse claimants of the compensation, the court may require the adverse claimants to interplead, so as to fully determine the rights and interests of the claimants.

(b) If any party to the suit demands the jury to view the land proposed to be taken, the petit jury shall become a jury of view to examine such land.

29-16-109. If any person who is a proper party defendant in the petition shall have been omitted from the petition, amendments to the same may be filed, which amendments, from the filing of the same, shall have the same effect as though contained in such petition.

29-16-110. (a)(1) In determining the amount of compensation to be paid, the jury shall give the value of the land or rights taken without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating incidental damages. The award of damages shall also include the following costs that were or will be incurred by the owner in connection with the transfer of title to the property:

(A) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring party;

(B) Penalty costs for repayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(C) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring party, or the effective date of possession by the acquiring party, whichever is earlier.

Whenever the condemnor acquires interest in any parcel of real property and such acquisition requires the removal of furniture, household belongings, fixtures, equipment, machinery, or stock in trade of any person in rightful possession, regardless of whether such person has a legal interest in such property, the reasonable expense of the removal shall be considered in assessing incidental damages. The reasonable expense of the removal of such chattels shall be construed as including the cost of any necessary disconnection, dismantling, or disassembling, the loading, and drayage to another location not more than fifty (50) miles distant, and the reassembling, reconnecting, and installing on such new location.

(2) In determining the just compensation for property when title to the fee is divested from the owner, such amount, excluding incidental damages, shall be not less than the last assessed valuation for tax purposes of such property.

(b) Notwithstanding any other provision of law, if any condemnor or governmental entity acquires any interest in real property pursuant to the execution of the power of eminent domain, the condemnor or governmental entity shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which the condemnor or governmental entity requires to be removed from such real property or which such condemnor or governmental entity determines will be adversely affected by the use to which such real property will be put.

(c) (1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (b) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of the tenant's term. If the owner of the land involved disclaims all interest in the improvements of the tenant, the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. In consideration for any such payment to the tenant, the tenant shall assign, transfer, and release to the acquiring party all the tenant's right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

29-16-111. When any building or structure is situated wholly or in part upon the land sought to be acquired, the condemnor may remove the same to adjoining land of the owner or may divide the same upon the line between the land sought to be acquired and the adjoining land, or may tear down or otherwise dispose of the same.

29-16-112. (a) If the amount of compensation awarded at the trial exceeds the amount assessed by the condemnor and deposited with the clerk, then the bill of costs prepared by the clerk shall be taxed against the condemnor. If the amount of compensation awarded at the trial is not in excess of the amount assessed by the condemnor and deposited with the clerk, then the bill of costs prepared by the clerk may be taxed against the defendants.

(b) Rule 54.04 of the Tennessee Rules of Civil Procedure shall govern the taxing of any additional costs.

29-16-113. (a) All judgments rendered against a municipality, county or the state shall be paid out of the general funds of the municipality, county or state, whichever may be the condemnor, together with interest at a rate of two percentage points (2%) greater than the prime loan rate established, as of the date of the taking, by the federal reserve system of the United States on any excess of the amount awarded an owner over the amount deposited with the clerk.

(b) All judgments rendered against a levee or drainage district, which condemns property in accordance with § 29-16-101(b), shall be paid from funds collected as provided in title 69, chapter 6, together with interest at the rate of six percent (6%) on any excess of the amount awarded an owner over the amount deposited with the clerk.

29-16-114. (a) If a local government acquires property by eminent domain for a public purpose through the proceedings established in this part, and if the property is not used for a public purpose, then, notwithstanding any resolution, ordinance, private act or charter to the contrary, such property shall be declared to be surplus property and shall be sold at public auction.

(b) For the purpose of this section, the transfer of the title to a non-governmental entity shall not be deemed to be for a public purpose.

PART 2

29-16-201. All persons or corporations regulated by the Tennessee Regulatory Authority may exercise the power of eminent domain for a public purpose in accordance with the provisions of part 1, but the extension of services to meet the service needs of only one private person or corporation shall not constitute a public purpose. Further, prior to proceeding under part 1, such persons or corporations must submit the petition proposed to be filed under part 1 to and obtain a certificate of authorization to proceed from the local government or

governments in whose jurisdiction the eminent domain is to be exercised. Such certificate of authorization shall be attached to the petition filed in court under §29-16-102.

29-16-202. Such certificate of authorization shall be granted if the local government or governments determine that the taking is for a public purpose and necessary for that purpose. If the certificate of authorization is not granted, the person or corporation submitting the proposal for approval may file a direct appeal with the municipal zoning board or county zoning board, as the case may be, where the proposed land to be taken lies, and for the purpose of hearing such appeals, then notwithstanding any other provision of law to the contrary, the municipal zoning boards or county zoning boards are hereby specifically granted the power and authority to hear such appeals in the manner as other appeals are heard by them.

PART 3

29-16-301. (a) The University of Tennessee shall have the power to condemn and appropriate such lands, property, property rights, privileges and easements of others as in the judgment of its board of trustees, or the executive committee thereof, may be necessary or proper for the purpose of providing buildings and other facilities, building sites, campus grounds, commons, streets, walkways, rights-of-way for utilities and other improvements, and for any extension, enlargement or improvement thereof, for the use and operation of such university and its various units and branches throughout the state.

(b) The compensation for damages in taking of such lands, property, property rights, privileges, and easements shall be paid by such university, and the same shall be condemned and determined in the mode and manner provided in part 1 of this chapter.

PART 4

29-16-401. (a) At any time on or after the filing of a petition by a housing authority, created pursuant to the Housing Authorities Law (compiled in title 13, chapter 20) or any other law of this state, for condemnation of property, and before the entry of final judgment, a housing authority may file with the clerk of the court in which the petition is filed, a declaration of taking

signed by the duly authorized officer or agent of the housing authority declaring that all or any part of the property described in the petition is being taken for the use of the housing authority.

(b) The declaration of taking shall be sufficient if it sets forth:

(1) A description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof;

(2) A statement of the estate or interest in such property being taken; and

(3) A statement of the sum of money estimated by the housing authority to be just compensation for the property taken, which sum shall be not less than the last assessed valuation for tax purposes of the estate or interest in the property to be taken.

29-16-402. At any time prior to the vesting of title to property in the housing authority, the authority may withdraw or dismiss its petition with respect to any and all of the property therein described.

29-16-403. (a) From the filing of the declaration of taking and the deposit in court for the use of the persons entitled thereto of the amount of the estimated compensation stated in the declaration, title to the property described as being taken by the declaration shall vest in the housing authority, free from the right, title, interest or lien of all parties to the cause, and such property shall be deemed to be condemned and taken for the use of the housing authority, and the right to just compensation for the same shall vest in the persons entitled thereto.

(b) Upon the filing of the declaration of taking, the court shall designate a day, not exceeding twenty (20) days after such filing, except upon good cause shown, on which the persons in possession shall be required to surrender possession to the authority.

29-16-404. (a) The ultimate amount of compensation shall be determined pursuant to part 1 of this chapter.

(b) In the event a housing authority files a declaration of taking and pays into court an amount estimated to be fair compensation for such property as provided in § 29-16-401 and §

29-16-403, the property owner shall have the right to make written request to the clerk of the court wherein such funds have been deposited, to pay to such property owner without prejudice to any of his rights, the sum so deposited with the clerk, and the clerk shall pay to the owner the sum so deposited, provided the owner agrees to refund the difference between such sum and the final award in the case if the final award is less than the sum so paid into court or that a judgment may be entered against the owner in such case for the difference. Such payment to the property owner or into court shall in nowise limit or fix the amount to be allowed under subsequent proceedings in such case and any further or additional sum that may be finally awarded in any subsequent proceedings shall bear interest at the rate set forth in §29-16-113, from the date of taking possession of the property or property rights condemned by the condemnor, provided, however, that no interest shall be allowed on the amount deposited with the clerk. The clerk shall be authorized to disburse the deficiency to the defendants as their interests may appear.

(c) In the event the housing authority shall not obtain possession of the property on the date of vesting of title, the ultimate amount of compensation, including any interest paid on the deficiency award, if any, shall be subject to abatement for use, income, rents, or profits derived from such property by the owner thereof subsequent to the vesting of title in the housing authority and any funds disbursed shall be less the amount of abatement.

PART 5

29-16-501. Any person employed under an act of congress of the United States, passed on August 6, 1947, and of the supplements thereto, or under the direction of congress, to provide charts and related information for the safe navigation of marine and air commerce and for other purposes, may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any other act which may be necessary to carry out the objects of such laws, and may erect any works, stations, buildings, and appendages requisite for that purpose, doing no unnecessary injury thereby.

29-16-502. If the person over whose lands the survey has been made, or upon whose lands monuments, stations, or buildings have been erected, or who has in any way sustained damage by such survey, cannot agree with the officer of the survey as to the damage sustained, the amount of such damage may be ascertained in the manner provided for the taking of private property for public uses under part 1.

PART 6

29-16-601. (a) Whenever any governmental entity or the United States of America shall desire to take or damage private property in pursuance of any law so authorizing, and shall find or believe that the title of the apparent or presumptive owner of such property is defective, doubtful, incomplete or in controversy; or that there are or may be persons unknown or nonresidents who have or may have some claim or demand thereon, or some actual or contingent interest or estate therein; or that there are minors or persons under disability who are or may be interested therein; or that there are taxes due or that should be paid thereon; or shall, for any reason, conclude that it is desirable to have a judicial ascertainment of any question connected with the matter; the governmental entity or the United States as the condemnor, through any authorized representative, may petition the circuit court of the county having jurisdiction, for a judgment in rem against such property, condemning the same to the use of the petitioner upon payment of just and adequate compensation therefor to the person or persons entitled to such payment.

29-16-602. The petition shall be filed and heard by the court in accordance with the provisions of part 1. If any of the persons referred to are minors or under disability, the facts shall be stated. If it shall appear that any of the defendants cannot be found or that they are nonresidents of the state, publication shall be made for them in the same manner as provided by law in similar cases in circuit court.

(b) After the expiration of thirty (30) days from the date the petition for condemnation is filed in the circuit court, the petitioner shall have the right to thereupon enter upon and take

possession of the land sought to be condemned, and if necessary to place such petitioner in possession thereof, the clerk of the circuit court in which the petition is filed shall issue to the petitioner, upon his request, a writ of possession directed to the sheriff of the county to put the petitioner into possession of the land.

29-16-603. (a) All parties having any interest or rights in such lands may be made defendants and proceedings shall only cover and affect the interest of those who are actually made parties, the unborn remaindermen being, however, bound by the proceedings to which all living persons in interest are parties.

(b) If it shall appear that any of the parties defendant are minors or otherwise under disability, the presiding judge shall appoint a guardian ad litem to represent them, whose compensation shall be fixed by the court and taxed as a part of the costs.

SECTION 3. Tennessee Code Annotated, Section 5-7-101, is amended by deleting the section in its entirety, and by substituting instead the following language:

Each county may acquire and hold property for county purposes, and make all contracts necessary or expedient for the management, control and improvement thereof, and for the better exercise of its civil and political powers, and, except as provided in §29-16-114 or §§5-14-107(10) and 5-14-108(o)(1) of the County Purchasing Law of 1957, may make any order for the disposition of its property.

SECTION 4. Tennessee Code Annotated, Section 6-54-122(a), is amended by deleting the language “chapters 16 and 17”, and by substituting instead the language “chapter 16”.

SECTION 5. Tennessee Code Annotated, Section 7-5-108, is amended by deleting the language “chapters 16 and 17”, and by substituting instead the language “chapter 16”.

SECTION 6. Tennessee Code Annotated, Section 7-39-303(a), is amended by deleting the figure “17”, and by substituting instead the figure “16”.

SECTION 7. Tennessee Code Annotated, Section 7-51-1203, is amended by deleting the figure “17”, and by substituting instead the figure “16”.

SECTION 8. Tennessee Code Annotated, Section 7-56-207, is amended by deleting the language “chapters 16 and 17”, and by substituting instead the language “chapter 16”.

SECTION 9. Tennessee Code Annotated, Sections 7-84-301 and 7-84-412, are amended by deleting the figure “17”, and by substituting instead the figure “16”.

SECTION 10. Tennessee Code Annotated, Section 11-14-407, is amended by deleting the language “chapters 16 and 17”, and by substituting instead the language “chapter 16”.

SECTION 11. Tennessee Code Annotated, Section 13-20-108(b)(1), is amended by deleting the subdivision in its entirety, and by substituting instead the following language:

(1) Title 29, Chapter 16, Parts 1 and 4, and any amendments thereto;

SECTION 12. Tennessee Code Annotated, Sections 13-21-204 and 13-21-206, are amended by deleting the language “chapters 16 and 17”, and by substituting instead the language “chapter 16”.

SECTION 13. Tennessee Code Annotated, Section 43-34-108, is amended by deleting the figure “17”, and by substituting instead the figure “16”.

SECTION 14. Tennessee Code Annotated, Sections 64-1-204 and 64-1-1103, are amended by deleting the figure “17”, and by substituting instead the figure “16”.

SECTION 15. Tennessee Code Annotated, Sections 64-2-207, 64-2-307, 64-2-507, and 64-4-106, are amended by deleting the language “chapters 16 and 17”, and by substituting instead the language “chapter 16”.

SECTION 16. Tennessee Code Annotated, Section 68-221-610, is amended by deleting the figure “17”, and by substituting instead the figure “16”.

SECTION 17. Tennessee Code Annotated, Section 70-5-102, is amended by deleting the language “17, parts 7 and 8”, and by substituting instead the figure “16”.

SECTION 18. Tennessee Code Annotated, Section 11-18-101, is amended by deleting the language “§§29-16-101-29-16-122”, and by substituting instead the language “Tennessee Code Annotated, title 29, chapter 16, part 1”.

SECTION 19. Tennessee Code Annotated, Section 65-29-104(12) is amended by deleting the language “§§29-16-101-29-16-122” and by substituting instead the language “Tennessee Code Annotated, title 29, chapter 16, part 1. and 65-29-125(b)(1), are amended by deleting the language

SECTION 20. Tennessee Code Annotated, Section 65-29-125(b)(1), is amended by deleting the language “§§29-16-101-29-16-121” and by substituting instead the language “Tennessee Code Annotated, title 29, chapter 16, part 1.

SECTION 21. Tennessee Code Annotated, Section 65-6-128, is amended by deleting the language “§§29-16-104-29-16-124” and by substituting instead the language “Tennessee Code Annotated, title 29, chapter 16, part 1.

SECTION 22. Tennessee Code Annotated, Section 69-5-106 is amended by deleting the section in its entirety, and by substituting instead the following language:

Tennessee Code Annotated, title 29, chapter 16, part 1 shall apply to and be taken and construed as parts of this chapter insofar as they are applicable to the purposes of this chapter.

SECTION 23. Tennessee Code Annotated, Section 6-2-201(15), is amended by deleting the language “§29-16-114” and by substituting instead the language “§29-16-110”.

SECTION 24. Tennessee Code Annotated, Section 6-19-101(15), is amended by deleting the language “§29-16-114” and by substituting instead the language “§29-16-110”.

SECTION 25. Tennessee Code Annotated, Section 29-20-105, is amended by deleting the section in its entirety.

SECTION 26. Tennessee Code Annotated, Section 12-1-205, is amended by deleting the language “recover the same attorneys’ fees, costs and expenses as are allowable in actions brought pursuant to §29-16-123(b).”, and by substituting instead the language “recover reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.”.

SECTION 27. Tennessee Code Annotated, Section 12-1-206, is amended by deleting the language "within the same limitation of actions period as provided in §29-16-124 for actions commenced pursuant to §29-16-123.", and by substituting instead the language "within twelve (12) months after the land has actually been taken, saving, however, to unknown owners and nonresidents, twelve (12) months after actual knowledge of such taking, not exceeding three (3) years, and saving to persons under the disabilities of infancy and unsoundness of mind, twelve (12) months after such disability is removed, but not exceeding ten (10) years."

SECTION 28. This act shall take effect July 1, 1998, the public welfare requiring it and shall apply to all condemnation proceedings occurring on and after such date.